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THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

June 28, 1983

Mr. Michael R. Cornelius, Comptroller
Department of Administration & Control
State House Annex
Concord, New Hampshire 03301

Dear Mr. Cornelius:

By letter dated June 16, 1983, you have asked our opinion with respect to several questions which have arisen as a result of the enactment of 1983 Laws C. 416 relative to the new Department of Administrative Services. Specifically, you have asked:

1. What portions of C. 416 take effect July 1, 1983, and what portions take effect after approval of some subsequent implementation plan?
2. At what time does the repeal of portions of RSA 8, specified in section 53 of C. 416, take effect?
3. If the organizational structure of C. 416 does not take effect until approval of an implementation plan, do the existing powers and responsibilities of the Department of Administration and Control (RSA 8), the Department of Centralized Data Processing (RSA 8-C) and their officials and personnel remain in effect until such approval?
4. If the answer to question 3 is affirmative, what role does the new Commissioner



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have with respect to the existing departments until such time as an implementation plan is approved?

5. What protection exists for the tenure, job classifications and responsibilities of classified and unclassified employees of the existing departments?

In a subsequent conversation, you also asked three additional questions:

6. Whether C. 416 changes any of the unclassified positions in the existing department into classified positions?
7. If the answer to 6 is in the affirmative, do the persons occupying the unclassified positions get terminal pay if they become classified?
8. If the answer to 5 is in the affirmative, what provision is there for retaining leave to which these individuals may be entitled when they become classified?

We will address each of these issues separately.

Your first question asks which portions of C. 416 take effect July 1, 1983 and which portions take effect after approval of the implementation plan. In order to answer your question, it is necessary to set forth a general explanation as to the manner in which the reorganization of the Department of Administration and Control will take place. As you know, the effective date of those portions of C. 416 relative to the new Department of Administrative Services is July 1, 1983. However, this does not mean that the reorganization itself takes place on July 1, 1983. Section 43 of C. 416 provides:

43. Transition Process. The transition and implementation procedure to be followed in implementing sections 40 - 53 of this act should be as specified in House Bill 1, the executive branch reorganization act of 1983, of the 1983 regular session of the general court.

House Bill 1 has been enacted into law and has become 1983 Laws C. 372. The transition and implementation procedures specified in C. 372 are set forth in portions of section 1 and in sections 2 through 5 of C. 372. Section 5, II specifically

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provides that the transfer or abolition of each agency transferred or abolished by the general court and the organization of the new department shall become effective following approval by the Joint Committee on Reorganization of a plan of implementation and on the date agreed upon by the governor and the Joint Committee. In other words, while the general court has enacted legislation which establishes new departments and abolishes or consolidates existing departments, the abolition or transfer does not take place until a plan has been established for the orderly transition and implementation of the reorganization.

The plan of implementation is drafted by the commissioner of the new department, who shall be appointed by the Governor and Council following establishment of the new department, in this case, July 1, 1983. See sections 4, I and III of C. 372 and RSA 21-G:8 as inserted by section 1 of C. 372. In drafting the plan, the commissioner may utilize the personnel, facilities and equipment of the existing agencies to be transferred or abolished. See section 4, III (b) of C. 372. The implementation plan must be completed and submitted to the Joint Committee on Implementation for its approval no later than 12 months following the appointment of the commissioner. See section 4, III (a) of C. 372. The effective date of the approved implementation plan shall be no later than 14 months after the commissioner's appointment. See section 5, IV of C. 372.

Since C. 416 incorporates the transition and implementation procedures of C. 372, the same procedure will be followed in the reorganization of the Departments of Administration and Control and Centralized Data Processing. Although the new Department of Administrative Services is actually "established" effective July 1, 1983 and the commissioner can be appointed as of that date, the actual abolition and consolidation of the Departments of Administration and Control and Centralized Data Processing which the general court has ordered do not occur until the date agreed upon by the Governor and the Joint Committee on Implementation following approval of the plan of implementation.

Additional sections of C. 416 support this conclusion. Section 45 provides that once the Governor and Council have appointed the new commissioner, the Governor may draw his warrant to cover the reasonable expenses of the "commissioner-designate." While the term "commissioner-designate" is not used anywhere else in C. 416 or in C. 372, the term "designate" suggests that the commissioner does not immediately assume the full powers ultimately vested in the commissioner over the new department.

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Section 48 of C. 416 also provides support for the conclusion that the new department does not become operational on July 1, 1983. That section requires the commissioner to include as part of the implementation plan his recommendations as to the appropriate temporary salary levels for the directors of the divisions of the new department. Upon receipt of the implementation plan, the Joint Committee on Reorganization forwards the commissioner's salary recommendations to the Legislative Fiscal Committee for approval. Since the salary levels for division directors are not set until after submission of the implementation plan, there is no authority to pay the directors prior to that time. This again suggests that the legislature did not intend that the new division directors take office until after the implementation plan has been drafted and approved.

Sections 50 and 53 provide further support for this interpretation. Section 50 addresses your role as incumbent comptroller "on the effective date of the transfers provided by this act...." Section 53 provides for the repeal of sections of RSA 8 which generally establish the structure of the Department of Administration and Control "on the effective date of the department of administrative services established pursuant to this act...." Neither section is effective on the effective date of the act (July 1, 1983). If the legislature had intended that to be the case, the language would clearly reflect that intention. Instead, the language used in both sections contemplates that the effective date of the transfers provided by the act and the effective date of the repeal of the referenced portions of RSA 8 occur at a date other than the effective date of the act. That date, as we have stated above, is the date agreed upon by the Governor and Joint Committee on Reorganization.

Your second question asks at what time the repeal of portions of RSA 8, specified in section 53 of C. 416, takes place. As indicated above, section 53 repeals those statutes on "the effective date of the department of administrative services established pursuant to this act ...", not on the effective date of the act itself. The Department of Administrative Services is "established" at the time C. 416 becomes law. However, because of the transition and implementation procedures set forth in C. 372, the effective date of the department (i.e., the date when it becomes operational) is the date agreed upon by the Governor and the Joint Committee on Implementation, following approval of the plan of implementation. Thus, those portions of RSA 8 which are repealed by section 53 of C. 416 are repealed on the date specified by the Governor and Joint Committee for the abolition of the Department of Ad-

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ministration and Control and the effective date upon which the new Department of Administrative Services becomes operational.

Your third question relates to whether the continuing powers and responsibilities of the Departments of Administration and Control and Centralized Data Processing and their officials and personnel continue until the effective date of the implementation plan. In light of the transition and implementation procedures for C. 416, it is our opinion that the powers and responsibilities of these existing departments and individuals remain in effect. However, as of July 1, 1983, a commissioner of the new department will be appointed so the question arises as to what role and authority he has over the existing departments until the reorganization is implemented. This is the gist of the fourth question you raised in your June 16, 1983 letter.

The powers and duties of the Commissioner of the Department of Administrative Services are set forth in RSA 21-G:13 as inserted by section 40 of C. 416. The Commissioner shall also possess the powers and duties of all commissioners described in RSA 21-G:9 as inserted by section 1 of C. 372. In both instances, those duties relate to the operation of the newly established department once that department becomes operational. The only role the Commissioner has prior to that time is in the development of the implementation plan. Although the abolished or transferred agencies must cooperate fully with the Commissioner in providing necessary assistance in the development of the plan, the Commissioner may not seek agency assistance for any purpose other than preparing implementation plans. See section 4, III (b) of C. 372.

Your fifth question asks what job protection exists for the present classified and unclassified employees of the department. As you know, section 50 of C. 416 provides that you, as the incumbent Comptroller, shall become the first director of the Division of Accounting Services at your existing salary and for the remainder of your term as Comptroller. There are no provisions in C. 416 which address the remaining employees of the Department of Administration and Control and Centralized Data Processing. However, RSA 21-G:18, as inserted by section 1 of C. 372 provides as follows:

21-G:18 Transfer of Employees. All employees heretofore engaged in the performance of duties in each agency abolished whose powers, duties, functions, and responsibilities are transferred in accordance with this chapter and any laws enacted by the general court relative to executive

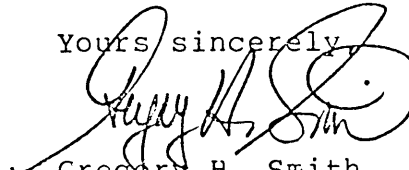
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branch reorganization are hereby transferred to the department to which such powers, duties, functions, and responsibilities are transferred to the extent the commissioner deems necessary to carry out the functions of the abolished agency and shall, insofar as practicable and necessary, continue to perform the duties heretofore performed, subject to applicable personnel statutes. (Emphasis added.)

Since the extent to which personnel will be transferred to the new department is left within the discretion of the newly appointed commissioner, we cannot speculate further as to what the tenure, job classification and responsibilities of those employees would be. For the same reasons, we cannot provide you with answers to questions six through eight.

If you wish to discuss this matter further or if you have any additional questions, please feel free to contact us.

Yours sincerely,



Gregory H. Smith
Attorney General



Deborah J. Cooper
Deputy Attorney General

DJC/der

cc: His Excellency, John H. Sununu
Governor of the State of New Hampshire

Mr. Robert L. Strickland, Acting Director
Centralized Data Processing Department

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